

PRISONS & CORRECTIONS SECTION

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Members of the Senate Judiciary Committee:

The Prisons and Corrections Section writes in opposition to House Bills 5216-5218, consistent with our previously adopted Public Policy Position (attached).

While the Section certainly supports legislative acknowledgement of the barriers prisoners face when returning to society as parolees, and its willingness to enact legislation to support these individuals, the Section opposes House Bills 5216-5218 for several reasons.

A fundamental problem with the certificate of employability ("certificate") is that if a parolee does not receive a certificate, it will likely be even more difficult for that parolee to find employment. Essentially, if a prisoner does not have a certificate, s/he is not employable.

This is compounded by the fact that the package of bills gives complete discretion to Michigan Department of Corrections ("MDOC") staff in determining who should receive a certificate. The bills provide extremely limited guidance to the MDOC, and do not provide a mechanism or process by which the MDOC must grant a certificate. It is unclear if the MDOC has the staffing capacity to review each prisoner to determine if s/he deserves a certificate.

While limited direction is provided in the bills as to who should receive a certificate, each criterion also has built-in MDOC discretion and a lack of funding to compensate any additional responsibility imposed on MDOC staff:

- **House Bill 5216, Section 2(A):** In order to receive a "certificate of employability," a prisoner must complete a "career and technical education course." However, the number of career and technical programs offered by the MDOC is limited and not every facility offers such a course. Even if the course is offered, not all eligible prisoners are admitted, based on long waiting lists. Therefore, even if a prisoner has expressed interest in receiving this programming, but is not admitted by no fault of the prisoner, s/he will be released from prison without a certificate.

- **House Bill 5216:** Sections 2(B) and 2(C): In order to receive a certificate, a prisoner must have received no major misconducts in the 2 years prior to his/her release AND must not have received more than 3 minor misconducts during that same period. MDOC staff has a great amount of discretion in determining whether a misconduct occurred, and whether it is “major” or “minor.” An example of a minor misconduct could be talking too loud, and whether a misconduct is issued is within the sole discretion of MDOC staff and varies from prison to prison. In addition, giving MDOC prison staff increased control over decisions that will affect the success of a parolee after they are released from prison can create a troubling dynamic.

In addition, there are several other problems with this package of bills:

- Employer Immunity: The Section is concerned about the broad employer immunity from liability found in these bills. Essentially, the bills create broader immunity from a lawsuit for negligent hiring or retention than for a non-parolee employee. In fact, in HB 5216, Section 6, an employer retains immunity even if a certificate is revoked, as long as the employer did not know the certificate was revoked. The broad immunity provisions could lead to employers terminating employees when their certificate expires, in order to retain immunity by hiring “newer” parolees with certificates. Additionally, the immunity provisions could allow for immunity in situations unrelated to an employee’s felony record—i.e., if an employee gets in a car accident and an employer may be vicariously liable. In the very least, the certificate should create a rebuttable presumption of non-negligence and should not be used to conclusively establish the employer did not act negligently. While the Section acknowledges the concerns of businesses, the scope of the particular immunity sections in these bills is problematic.
- Eligibility: The certificate is only for those being released from state prison. This fails to capture many other offenders, including current parolees, probationers, federal offenders, those released from county jails, and anyone with a felony record not sent to prison.
- Duration: The certificate is only valid for 4 years after release. Therefore, it is possible that employers could terminate the employment of a parolee once their certificate expires, in order to favor parolees with valid certificates, so as to retain immunity from liability. Most parole periods are for 2 years; as such, it is unclear who will administer the certificates once the parolee is off parole and the MDOC has no jurisdiction over the individual. The 4-year time period should be removed, and the certificate should not expire. The bills should also specify that the ability to revoke the certificate only lasts for the duration of one’s parole period.
- Revocation Process: HB 5216, Sections 3 and 4: The revocation process also provides the MDOC with a tremendous amount of discretion. For example, the MDOC can revoke the certificate if there is any institutional misconduct in the 30 days prior to release. Additionally, while there is a provision for a hearing before revoking the certificate, it can be revoked if “the department determines that the

individual is no longer a proper candidate for a certificate of employability.” The bills provide no standards by which to guide the MDOC’s discretion.

- Parole Process Impact: It is also unclear what effect, if any, the certificate process may have on the parole process—whether it will slow down or impede grants of parole to those the Parole Board otherwise deem parolable. The certificate process may invade the jurisdiction of the Parole Board in making parole decisions.

In conclusion, the Section reiterates the importance of the Legislature analyzing barriers to successful reentry that returning citizens face. However, this package of bills would likely create more problems for parolees, as well as put other offenders not from a state prison at a disadvantage in obtaining employment. The Section would encourage the Legislature to review the Uniform Collateral Consequences of Conviction Act as a more comprehensive plan for assisting returning offenders, as well as the “Ban the Box” initiative (see Public Policy Position, attached).

Thank you for your consideration,

A handwritten signature in black ink, appearing to read "J. Zimbelman", with a stylized, flowing script.

Jessica L. Zimbelman
Chair, Prisons and Corrections Section, State Bar of Michigan

PRISONS & CORRECTIONS SECTION
Respectfully submits the following position on:

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HB 5216 – HB 5218

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The Prisons & Corrections Section is not the State Bar of Michigan itself, but rather a Section which members of the State Bar choose voluntarily to join, based on common professional interest.

The position expressed is that of the Prisons & Corrections Section only and is not the position of the State Bar of Michigan.

To date, the State Bar does not have a position on this matter.

The total membership of the Prisons & Corrections Section is 140.

The position was adopted after discussion and vote at a scheduled meeting. The number of members in the decision-making body is 15. The number who voted in favor to this position was 10. The number who voted opposed to this position was 0. The number who abstained was 1.

Report on Public Policy Position

Name of Section:

Prisons & Corrections Section

Contact person:

Jessica Zimbelman

E-Mail:

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Bill Numbers:

HB 5216 (Kesto) Corrections; parole; issuance by department of corrections of certificate of employability to certain prisoners; allow. Amends 1953 PA 232 (MCL 791.201 - 791.285) by adding sec. 34d.

HB 5217 (Walsh) Labor; other; limited liability for employers that employ individuals issued a certificate of employability; provide for. Amends 1961 PA 236 (MCL 600.101 - 600.9947) by adding sec. 2956a.

HB 5218 (Santana) Occupations; individual licensing and regulation; prerequisite of "good moral character"; eliminate for occupational licensing purposes. Amends sec. 2 of 1974 PA 381 (MCL 338.42).

Date position was adopted:

March 1, 2014

Process used to take the ideological position:

Position adopted after discussion and vote at a scheduled meeting.

Number of members in the decision-making body:

15

Number who voted in favor and opposed to the position:

10 Voted for position

0 Voted against position

1 Abstained from vote

4 Did not vote

Position:

Oppose

The text of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report.

<http://legislature.mi.gov/doc.aspx?2014-HB-5216>

<http://legislature.mi.gov/doc.aspx?2014-HB-5217>

<http://legislature.mi.gov/doc.aspx?2014-HB-5218>

PRISONS & CORRECTIONS SECTION
Respectfully submits the following position on:

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HB 4366

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The position expressed is that of the Prisons & Corrections Section only and is not the position of the State Bar of Michigan.

To date, the State Bar does not have a position on this matter.

The total membership of the Prisons & Corrections Section is 140.

The position was adopted after discussion and vote at a scheduled meeting. The number of members in the decision-making body is 15. The number who voted in favor to this position was 12. The number who voted opposed to this position was 0.

Report on Public Policy Position

Name of section:

Prisons & Corrections Section

Contact person:

Jessica Zimbelman

E-Mail:

jzimbelman@sado.org

Bill Number:

HB 4366 (Durhal) Labor; fair employment practices; job applications; eliminate reference to felony conviction.
Creates new act.

Date position was adopted:

October 12, 2013

Process used to take the ideological position:

Position adopted after discussion and vote at a scheduled meeting.

Number of members in the decision-making body:

15

Number who voted in favor and opposed to the position:

12 Voted for position

0 Voted against position

0 Abstained from vote

3 Did not vote

Position:

Support

The text of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report.

<http://legislature.mi.gov/doc.aspx?2013-HB-4366>

